

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	

**REPLY COMMENTS OF  
CBS BROADCASTING INC.**

**CBS BROADCASTING INC.**

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## SUMMARY

Program providers across the industry, including CBS, believe that high quality closed captioning is an integral component of the overall service that they deliver to their viewers. Consequently, they have gone to great lengths and expense to develop systems to create and transmit high quality captions, and to monitor those systems to ensure that they are working as designed. The Commission's expectation that market forces would ensure the provision of quality captioning has been borne out. As aptly stated by one commentator, the "dismal" picture of the state of closed captioning painted by proponents of additional regulation is simply inaccurate.

In light of the record, there is no need for the imposition of non-technical or "accuracy" captioning quality standards. Not only are such standards unnecessary to ensure quality captioning, they also would be financially and administratively onerous. The burden of calculating an "error rate" for even one program would be significant, and to do so for the thousands of hours each provider may disseminate during the course of a year would be staggering. Accuracy standards would add other significant costs. Competition for captioners capable of meeting the mandated standard would drive up costs for all providers. There are already significant challenges to securing sufficient qualified real-time captioners to meet the January 1, 2006 obligation to caption 100% of new non-exempt programming, and the proposed extension of the prohibition on electronic newsroom captioning (ENT), which CBS opposes, would also add significantly to real-time captioning costs for all providers.

In addition, "accuracy" regulations would also prove unworkable, because, as reflected in differences of opinion expressed in various comments, it would be extremely difficult to define

by regulation what types of captioning imperfections should be considered “error” worthy of counting against a permitted total.

There is also no basis for imposing technical captioning standards. Despite claims of “pervasive” technical problems, proponents of technical standards offer no more than a few isolated examples. Captioning providers have strong market incentives for rectifying such sporadic problems as soon as possible, and do so.

The Commission should reject the proposal to establish specific per violation forfeiture amounts for non-compliance with the captioning rules. This proposal is premised on the assumption that there is widespread, willful non-compliance with the Commission’s regulations. The record conclusively does not support that assumption. There is no reason to alter the present enforcement regime, under which the Commission has both the authority to impose penalties for violations and forfeitures should it identify providers who willfully and repeatedly violate the existing regulations.

The commission also should reject the proposal that it reverse its judgment and impose on caption providers an obligation to compile and file compliance reports. Certifying compliance would necessarily involve the time-consuming and costly administrative burden of checking thousands of hours of programming. Ensuring compliance is far more efficiently and reasonably accomplished by the current system, under which consumers can contact providers directly to address their questions about compliance.

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**I. Introduction.**

CBS Broadcasting Inc. (“CBS”)<sup>1</sup> submits these reply comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>2</sup> In initial comments submitted to the Commission, some commentators have indicated support for the imposition of new regulations to address a range of perceived problems. As reflected in the comments of many other commentators, however, the proposals under consideration would impose severe burdens on the industry, and the purported problems are, to the extent they exist, not widespread, and are more than adequately addressed by the existing regulatory scheme.

**There Has Been General Success Industry-wide  
In Consistently Providing The Public With High Quality Captioning**

As reflected in numerous comments filed in this proceeding, program providers across the industry view high quality closed captions as an integral component of the overall service

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<sup>1</sup> CBS Broadcasting Inc. is currently an indirect wholly owned subsidiary of Viacom Inc. Viacom Inc. will be split into two publicly-traded companies, CBS Corporation and Viacom Inc., at the end of 2005. CBS Broadcasting Inc. will become a wholly owned subsidiary of CBS Corporation at that time.

<sup>2</sup> *In the Matter of Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, Notice of Proposed Rulemaking*, CG Docket No. 05-231, 20 FCC Rcd 13211 (2005) (“NPRM”).

they deliver to their viewers. Consequently, program providers have gone to great lengths and expense to develop systems to create and transmit high quality captions, and to monitor these systems to ensure they are working as designed.

CBS is a provider of closed captions through the CBS and UPN Networks (“Networks”) and the 39 television stations of the CBS Television Stations.<sup>3</sup> A brief review of just some CBS’s efforts demonstrates the seriousness with which it takes its captioning obligations. With respect to off-line captions, used primarily for pre-recorded entertainment programming, the CBS and UPN Networks require multiple reviews of the finished product, by the captioning agency prior to delivery and again by CBS personnel after delivery. For real-time captioning by the CBS Network of CBS News programming, CBS provides its captioning agencies advance access to news scripts and rundowns, and provides CBS liaisons to the agencies to keep them apprised of planning and changes in programming prior to and during the airing of both regularly scheduled CBS News programs and CBS News special reports. The captioning agencies responsible for the real-time captioning of CBS Sports broadcasts are also provided with the precise satellite, encoding, and broadcast information required in advance to ensure captioning of these complex broadcasts.

Since 2001 the Networks’ new contracts with their captioning agencies have required that each real-time stenocaptioner assigned to broadcasts must be certified by the National Court Reporters Association (NCRA).<sup>4</sup> The contracts reserve the right to request a change in stenocaptioners if they fail to perform adequately. The Networks also require proof that each

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<sup>3</sup> These stations are currently referred to as the Viacom Television Stations Group, an unincorporated division of Viacom Inc. They will be a division of CBS Corporation after the split of CBS and Viacom. The stations group consists of 21 CBS stations, 15 UPN stations, one station affiliated with the WB Network, and two stations not affiliated with a major network.

<sup>4</sup> State certifications that meet or exceed these standards are considered for acceptance on a per captioner basis.

captioner has backup systems including, but not limited to: back-up steno captioning and computer system; back-up telephone lines available at all times during assigned broadcast hours, for connection to the Network or station captioning modem and for program audio monitoring; and an uninterruptible power supply (UPS) with sufficient capacity to power all systems through completion or until a replacement captioner can be secured.

The Networks take equally painstaking steps to monitor and ensure the technical quality of their captions. Network technicians ensure that all off-line captions are encoded and transmitted, and that real-time captions are transmitted in compliance with the specifications set forth under industry standards for both analog and digital broadcasting. The Networks monitor outgoing all closed captions, and integrity is confirmed by monitoring the return Network feed. When irregularities are detected, corrective action is promptly initiated. CBS and UPN personnel responsible for captioning are on call on a 24 hour a day basis to intervene and coordinate corrective action, as needed.

The level of captioning complaints received by the Networks is low, and complaints are personally responded to by captioning management personnel. The Networks' captioning management personnel are aware of no formal complaint filed against the Networks.

CBS and UPN stations group contracts require the captioning agencies to use captioners certified by the National Court Reporters Association. The stations monitor their closed captions, and as soon as a problem is detected, action is promptly taken to rectify it.<sup>5</sup>

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<sup>5</sup> For example, CBS's Baltimore station WJZ-TV received a complaint in May 2004 that crawls conveying weather emergency information had interfered with closed captioning. In a letter of June 18, 2004 to the Commission responding to a Notice of Informal Complaint, CBS reported that "Prior to the receipt of this complaint, the station used a 'caption bridge' around the computer graphic system that generates crawl information, which it believed would allow captions and crawl information to co-exist.... Following receipt of this complaint, the station contacted the manufacturer of the crawl generation equipment who recommended a solution to the apparent problem. Subsequently, the station purchased a newer model of "caption bridge" that generates special codes in the caption data to force the captions to the top of the screen in the event crawls are inserted at the bottom. The equipment is working effectively to prevent the list of captions when the station now runs emergency and

Although CBS has long been a leader in providing quality closed captioning to its viewers, CBS believes its commitment to the provision of quality captioning is now shared across the industry. As program providers have adjusted to the steadily increasing benchmarks for captions, the efforts CBS has long made have become more and more representative of what is being undertaken generally by the industry.

While the specifics of CBS's system may differ from those of other program providers, the record reflects, as reported by other commentators, that the industry fully recognizes the importance of providing quality captioning, and has put in place effective systems for creating and monitoring those captions.<sup>6</sup> As aptly stated by one commentator, the "dismal" picture of the state of closed captioning painted by proponents of additional regulation is simply inaccurate.<sup>7</sup>

## **II. The Commission Should Not Impose Quality Standards**

### **a. The Imposition of Non-Technical Quality Standards Is Unnecessary and Unworkable**

When it originally adopted the closed captioning rules, the Commission made the sound judgment that it should not adopt standards for the quality and accuracy of closed captions.<sup>8</sup> The Commission understood that "vast amounts of programming" would need to be captioned, and concluded that it was best to allow "video programming providers to establish quality standards

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breaking news crawls." Letter of June 18, 2004 to Ms. Martha E. Contee, NOIC – Disabilities Related FCC No. 04-N92373. The equipment was also bought for the other CBS stations, to avert similar problems.

<sup>6</sup> See, e.g., Comments of AZN Television, Casino & Gaming Television, Comcast Sportsnet (Mid-Atlantic), Comcast Sportsnet (Philadelphia), E! Entertainment Television, G4 - Videogame TV, The Golf Channel, Inspirational Life Television, Outdoor Life Network, Style Network, TV One at 14-19 ("*Joint Comments of Cable Networks*"); Comments of the Motion Picture Association of America, Inc. at 3-4; Comments of the United States Telecom Association at 5-6 ("*USTA Comments*"); Comments of the National Cable and Telecommunications Association at 3-4 ("*NCTA Comments*").

<sup>7</sup> Joint Comments of Cable Networks at 6-7.

<sup>8</sup> *Closed Captioning and Video Description Report and Order*, 13 FCC Rcd. 3272, 3374 at ¶222-24 (1997) ("*Closed Captioning Report and Order*").

and quality controls for the non-technical aspects of captioning through their arrangements with captioning suppliers or as part of the requirements of their programming contracts and licensing agreements.”<sup>9</sup> The Commission’s reliance on the marketplace to develop quality standards was not misplaced. The record has borne out that the market forces have resulted in generally high caption quality.

As described above with respect to CBS’s experience, and as described in other comments filed in this proceeding, program providers, small as well as large, consider captions an integral and important part of the service they deliver to the public, and have adopted extensive measures to ensure quality captioning. CBS submits that the record in no way supports the contention of some commentators that there are “widespread problems” with the non-technical quality of captioning. In fact, some who would impose qualitative standards appear to concede problems are “generated by a few bad actors.”<sup>10</sup> These commentators have utterly failed to show the existence of a pervasive problem, as they must in order to justify the imposition of new regulations.

Moreover, the proposals offered by some commentators for caption quality “standards” are entirely unworkable, and, in fact, illustrate the misguided nature of the effort to impose regulations in this area. Some would like to impose strict percentage limits on “errors” that may be permitted before a program provider is deemed to have committed a regulatory violation. For example, under one formulation, which would require an “accuracy rate” of 99% for real-time captioning, it would be necessary to calculate the “total number of all words in a program minus the total number of all errors in that program divided by the total number of all words in that

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<sup>9</sup> *Id.* at ¶222.

<sup>10</sup> *Comments of the WGBH National Center for Accessible Media*, at 5 (“NCAM Comments”).

program.”<sup>11</sup> As illustrated by this commentator’s example,<sup>12</sup> the burden in determining a “violation” for even one program would be significant, and to do so for the thousands of hours each provider may disseminate during the course of a year would be absolutely staggering. These commentators do not address the practical questions of whose responsibility it would be to scrutinize each program to determine if it were within the 1% tolerance, and who would pay for the immense expenditure of time necessary.

The fact is many program providers, including the CBS and UPN Networks, do require their captioners to meet specified accuracy rates. But these rates are established by contractual agreement, and are enforced by means of spot audits, with the financial burden of the audit also allocated by contract. This market-driven method of maintaining high quality captioning is far superior to any regulation-driven method that would be inflexible and blind to cost considerations.

In addition, it would be extremely difficult and time consuming to define by regulation what should be considered an “error” worthy of counting against the permissible total. Even commentators who wish to impose non-technical standards are in disagreement as to what factors are crucial to the determination.<sup>13</sup> Some of these commentators would find “errors” if captions fell short in a wide variety of ways – not just in “accuracy of transcription, spelling, grammar and punctuation,” but in failures to identify speakers (whether they are on screen or

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<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> “For example, if there were 100,000 total words in a program and 1,400 errors in that program, the Accuracy Rate would be 98.6% calculated as follows: 100,000 minus 1,400 = 98,600; 98,600 divided by 100,000 = 98.6%.” *Id.* at 9.

<sup>13</sup> For example, while one commentator says that “completeness” is one of three factors to be considered in determining quality, *see* Comments of Accessible Media Industry Coalition at 6-7 (“*AMIC Comments*”), another disagrees: “While some may argue that completeness is an integral component, we maintain that while verbatim is the goal, it is on occasion not possible to achieve because of conditions beyond the captioner’s control, such as rapid speech, simultaneous conversations between people on air, and unfamiliar names or words which may be used during the broadcast.” Comments of Media Captioning Services at 7.

off), or to identify nonverbal sounds, such as sound effects and music.<sup>14</sup> Others would factor in “timeliness,” meaning that they would measure the number of seconds between when words are spoken and when they appear in a caption, and find noncompliance where the gap exceeded some ruled-defined interval.<sup>15</sup> How such “errors” are to be counted toward a required accuracy rate of, for example, 99% for real-time captioning is far from clear. In short, the onerous task of calculating the number of “errors” would be exacerbated by numerous questions of whether particular imperfections in captions constituted “error” or not.

Imposition of non-technical quality standards would add significant new costs for all program providers. As indicated above, there would be enormous costs associated with calculating compliance. In addition, program providers will undoubtedly be asked to pay more to ensure that their captioning agencies provide them with captioners capable of meeting a mandated accuracy standard. Competition for these captioners undoubtedly will drive up costs for all program providers, both those whose captioners presently meet the highest standards, and for all others, including those small providers least able to pay. As commentators have noted, there already are significant challenges to securing sufficient qualified real-time captioners to meet the January 1, 2006 obligation to caption 100% of new, nonexempt programming.<sup>16</sup> Competition for competent real-time captioners continues to come from the court reporting

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<sup>14</sup> NCAM Comments at 8-10.

<sup>15</sup> AMIC Comments at 10-11: “[A] program should be considered out of compliance if there is more than one sentence (or portion of a sentence) in any half hour of programming in which a word appears in a caption more than five seconds after the word was spoken. For live captions, a program should be considered out of compliance if there are more than two instances in each half hour of programming when a sentence (or portion of a sentence) is delayed more than 8 seconds at the consumer’s receiver.”

<sup>16</sup> *Comments of the National Court Reporters Association*, at 9-11.

industry. The proposed extension of the prohibition on electronic newsroom captioning (ENT), which CBS opposes, would also add significantly to real-time captioning costs for all providers.

**b. There Is No Basis For Imposing Technical Standards Beyond The Existing Pass Through Obligation**

In its NPRM, the Commission seeks comment on whether its existing regulations relating to technical quality of captions require alteration. Specifically, it raises the question of whether there is a need for regulations in addition to the existing “pass through” requirement, and the requirement that providers “be responsible for any steps needed to monitor and maintain their equipment and signal transmissions to ensure that the captioning included with the video programming reaches consumers.”<sup>17</sup> It is clear from the comments submitted – both those arguing for and against additional regulation – that the answer is no.

The picture that emerges from the comments is of an industry which has taken deliberate and effective steps to ensure that captions are passed through to viewers, with a minimum of disruption. In their comments, program providers have detailed the quality control and monitoring systems they have implemented to ensure captions are delivered along with their video and audio signals.<sup>18</sup> As described above, CBS, like others in the industry, makes extensive and effective efforts to ensure that its captions reach its audience without degradation.

As other commentators have pointed out, there is no evidence of a widespread problem with the technical quality of captions. As noted by NCTA, the Commission, by its own records, apparently has received only a few complaints relating to captioning.<sup>19</sup> Despite assertions of

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<sup>17</sup> *Closed Captioning Report and Order*, 13 FCC Rcd at ¶¶211-12.

<sup>18</sup> *See, e.g.*, NCTA Comments at 5-6; Joint Comments of Cable Networks 24-25; USTA Comments at 8-9.

<sup>19</sup> *See* NCTA Comments at 5 & n.11.

“pervasive” technical problems, commentators who seek the imposition of technical requirements have offered no more than a few isolated examples. There is no doubt that occasionally technical problems can arise with closed captioning, just as it does with audio and video. But these are often unavoidable – as when they are caused by equipment failures or storm conditions – and in every case, the program provider has strong market incentives for rectifying the problem as soon as possible.

### **III. Establishment of Specific Per Violation Forfeiture Penalties For Non-Compliance With Captioning Regulations Is Unwarranted**

The NPRM seeks comment on the question of whether the Commission should establish specific per violation forfeiture amounts for non-compliance with the captioning rules, and, in particular, notes TDI’s proposal of an \$8,000 per violation base forfeiture amount for each hour of a provider’s programming falling below the applicable benchmark (which will shortly be 100% for new, nonexempt programming). There is no reasonable basis for the imposition of a specific forfeiture schedule at all, let alone the harsh regime proposed by TDI.

As noted by a number of commentators, the proposal for imposition of a forfeiture schedule is premised on the assumption of widespread, willful non-compliance with the Commission’s regulations. The record conclusively does not support that assumption. As described above, CBS’s record is one of scrupulous efforts to comply with the captioning regulations, with clearly successful results. The record of the industry as a whole, as reflected in the comments submitted, is not significantly different.

In light of this record, there is no reason to alter Commission’s present enforcement authority. The Commission currently has both the authority to impose penalties for violations,<sup>20</sup>

and the ability to impose forfeitures should it identify providers who willfully and repeatedly violate the regulations.<sup>21</sup> But while the Commission already has the ability to punish willful violators, the record demonstrates that, overwhelmingly, the failure to provide captions, or to provide flawless captions, is not willful. Rather, it is the product of unavoidable factors, including severe weather conditions, equipment failures, and inevitable human error. Even many of the commentators who wish to impose additional sanctions on caption providers acknowledge that because of “technical limitations inherent in the technology, not every word will always be able to be captioned.”<sup>22</sup> Where “perfect” captioning is understood to be unachievable, even by its proponents – and where providers will soon be required to caption all of their new, non-exempt programming and are striving mightily to ensure the steady delivery of quality captions – imposition of a rigid system of forfeitures is entirely unwarranted.

#### **IV. Compliance Reporting Requirements Would Be Burdensome And Unnecessary To The Effective Functioning Of The Complaint Process**

The NPRM also asks whether the Commission should reverse the judgment it made in the original Report and Order, and impose on providers an obligation to file compliance reports as to the amount of captioned programming they provide.<sup>23</sup> CBS submits that the Commission’s original judgment that such reporting requirements would be “unduly burdensome and administratively cumbersome”<sup>24</sup> remains correct. Certifying compliance and filing compliance

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<sup>20</sup> 47 C.F.R. §79.1(g)(8). Such penalties may include “a requirement that the video programming distributor deliver video programming containing closed captioning in an amount exceeding that specified [by the then-current benchmark] in a future period of time.”

<sup>21</sup> 47 C.F.R. §1.80(a)(2).

<sup>22</sup> *AMIC Comments* at 5.

<sup>23</sup> 13 FCC Rcd. at ¶43.

reports would necessarily involve the time-consuming and costly administrative burden of checking thousands of hours of programming. Ensuring compliance is far more efficiently and reasonably accomplished by the current system, under which consumers can contact providers directly to address their questions about compliance. Consumers' ability to assess compliance will be quite straightforward as of January 1, 2006, when all new, nonexempt programming will have to be captioned.

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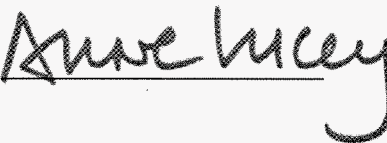
<sup>24</sup> *Closed Captioning Report and Order*, 13 FCC Rcd at ¶244.

## V. Conclusion

For the foregoing reasons, CBS submits that the current regulatory scheme should be left in place. Program providers understand the value and importance of quality captioning to their audiences, and across the industry have taken extensive measures to create high quality captions and ensure their delivery. It is therefore unnecessary to implement non-technical or technical quality standards, to establish a harsh forfeiture regime, or to adopt burdensome monitoring or compliance certification requirements. Such measures would only add substantial unnecessary administrative burdens and expense for all caption providers.

Respectfully Submitted,

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